

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>In re</b>	)	
	)	
<b>JEFFERSON COUNTY, ALABAMA, a</b>	)	<b>Case No. 11-05736-TBB9</b>
<b>political subdivision of the State of Alabama,</b>	)	
	)	<b>Chapter 9 Proceeding</b>
	)	
<b>Debtor.</b>	)	

**MOTION OF FRATERNAL ORDER OF POLICE LODGE  
NO. 64, WILLIAM MCANALLY, ROBERT THOMPSON AND  
A. L. FINLEY TO ABSTAIN AND MOTION TO LIFT  
AUTOMATIC STAY**

The Fraternal Order of Police Lodge No. 64, William McAnally, Robert Thompson and A. L. Finley (collectively referred to as “Jefferson County FOP”), move the Court for entry of an order abstaining and to lift the automatic stay pursuant to 11 U.S.C. 362(d) in the litigation pending in the state courts as described below:

1. Jefferson County Fraternal Order of Police Lodge No. 64, on behalf of the classified employees of Sheriff Mike Hale and William McAnally, Robert Thompson and A. L. Finley, classified employees of Sheriff Hale, initiated an action in the Circuit Court of Jefferson County, Alabama on June 30, 2010 against the defendants Personnel Board of Jefferson County, Jefferson County and Sheriff Hale, in his official capacity. CV 2010-902359. The state court complaint contested a newly-adopted policy by the Personnel Board to permit local appointing authorities (including Sheriff Hale and Jefferson County) the option to annually decide whether their classified employees receive merit/step raises under the civil service pay plan mandated by state law. Following that new policy in July 2009, Sheriff Hale and the County each began a practice of “suspending” merit/step raises for their respective classified employees. Jefferson

County FOP claimed the Personnel Board's policy of giving local appointing authorities the option of whether to provide merit/step raises was contrary to Act No. 248 of the 1945 Alabama Legislature, as amended ("Personnel Board Act"). That state statute creates the Personnel Board and governs the civil service system applicable to most public employees in Jefferson County and some 24 other jurisdictions within the civil service system.<sup>1</sup> The case in large part raised issues of statutory construction of the Personnel Board Act.

2. The Jefferson County FOP sued the Personnel Board contesting its policy as contrary to the governing statute. The Sheriff was sued because he is the "appointing authority" under the statute, the employer of Sheriff's Office employees and responsible for the under payment of Sheriff's Office employees under the statute. The County was joined as a defendant because it is the disbursing agent for payment of compensation to Sheriff's Office employees from the Sheriff's budget.<sup>2</sup> Hence, the case is not a direct action against the County treasury. The County has not played a lead role in the litigation and adopted the various motions and briefs filed by the Personnel Board.

3. On December 22, 2010, the state Circuit Court granted the defendants' summary judgment motions, construed the statute in the manner urged by the Personnel Board and

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<sup>1</sup>The Personnel Board Act is referenced in the Jefferson County Commission's resolution authorizing the filing of the Chapter 9 petition. See, doc. no. 1 at page 15. In that resolution, the Commission authorized the County to honor all "pre-petition obligations to current County employees for wages and salaries. . ." that arise under the Personnel Board Act.

<sup>2</sup>Movants have reviewed this Court's recent Order on other stay relief motions concerning the Sheriff. Doc. no. 588. The Order suggests that the State is liable for the Sheriff's debts. Rather, the County is required by state law to annually appropriate an adequate budget to the Sheriff which the Sheriff has the discretion to spend. The Sheriff's lawful salary expenses are to be paid from the Sheriff's budget.

dismissed the case. The Jefferson County FOP appealed to the Supreme Court of Alabama. Case no. 1100430. Briefing was completed in April 2011 and the Court has not yet acted on the appeal. The standard of review in the Supreme Court is *de novo*.

4. The pending appeal in the Alabama Supreme Court involves important issues of state statutory construction that not only will impact the employees of the Sheriff's Office, but thousands of other civil service employees of other jurisdictions throughout Jefferson County. The appeal is in an advanced stage and ready for disposition by the Supreme Court of Alabama.<sup>3</sup> The case only raises issues of state law. Although no Notice of Bankruptcy has been filed in the Supreme Court, Jefferson County's bankruptcy counsel has advised movants' counsel that the case has been stayed. As a result, movants are filing this motion.

#### **A. Abstention**

5. Movants request this Court abstain from hearing such matters and that the stay be lifted to allow the state courts to complete their adjudication of movants' claims. Movants contend the Court should exercise its discretion to abstain under the permissive abstention provisions of 28 U.S.C. 1334(c)(1).

6. The facts to be considered in determining whether discretionary abstention is appropriate include: effect of abstention on the bankruptcy estate, the extent to which state laws predominate over bankruptcy issues, the difficulty or unsettled nature of the applicable law, the presence of a related proceeding in state court, the basis of bankruptcy jurisdiction, the degree of relatedness to the bankruptcy case, the substance rather than form of an "asserted" core

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<sup>3</sup>While movants requested oral argument before the Supreme Court, the Court has not responded to the request and such requests are rarely granted.

proceeding, the feasibility of severing state court claims from bankruptcy matters, the burden of bankruptcy court's docket, the likelihood of forum shopping, the existence of a right to a jury trial, and the presence of the non-debtor parties. *Twyman v. Wedlo*, 204 B.R. 1006, 1017 (Bankr.N.D.Ala. 1996). These factors will be discussed below.

7. The effect of abstention on the estate would be positive. The state courts have primary responsibility to determine matters of state law and this matter had been under submission to the Supreme Court of Alabama for some six months at the time the petition was filed.

8. State law predominates over the bankruptcy issues. The claims asserted by the movants are purely state law claims that do not relate to the matters that have precipitated the County's bankruptcy petition.

9. With regard to the difficulty of the applicable law, the state courts have historically interpreted and enforced the Personnel Board Act and decided matters of statutory construction of the Act. See, *Willis v. Kincaid*, 983 So.2d 1100 (Ala. 2007).

10. The case was under submission to the Supreme Court when the petition was filed and the case was stayed.

11. The basis for bankruptcy jurisdiction factor also weighs in favor of abstention by this Court. The movants' claims could only be heard by this Court due to the filing of the County's petition. There is no independent basis which would give rise to a federal cause of action, as the state law case involves only state law claims and entities and persons all located within the state of Alabama thereby eliminating any diversity jurisdiction.

12. While tangentially related to the County as the disbursing agent for the Sheriff's budget, movants' state court case is remote from the pending bankruptcy case and does not involve any key issues involved in this case. Movants are not County employees; they are employees of the Sheriff. The Sheriff is a separate appointing authority under the Personnel Board Act. It is beyond debate that the Sheriff is an official of the State and not the County. *Marsh v. Butler County*, 268 F.3d 1014, 1028 (11<sup>th</sup> Cir. 2001); *Turquitt v. Jefferson County*, 137 F.3d 1285 (11<sup>th</sup> Cir. 1998) (en banc). Hence, the Sheriff is a non-debtor.

13. There is no question that the issues to be decided in the state court case are ones of pure state law and, therefore, are not a core bankruptcy proceeding.

14. It is entirely feasible, and even economical and judicially efficient, to sever these matters to allow the state courts to resolve the matter of statutory construction.

15. Forum shopping is not an issue. To date, no one has claimed that these matters should be heard by this Court.

16. There is no right to a trial by jury of the matters pending before the state court.

17. Regarding the presence of non-debtors in the proceeding, this fact weighs heavily in favor of abstention. All of the movants are non-debtors. The Sheriff is a state officer with a separate budget from County government.<sup>4</sup> The Personnel Board and Sheriff are separate entities from the County government that are non-debtors. See also, doc. no. 588 (Order denying Sheriff's motion to generally obtain the benefit of the automatic stay).

18. Consideration of the factors discussed above support abstention by this Court.

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<sup>4</sup>Under State law, the County funds the Sheriff by provision of his annual budget. See, Ala. Code § 11-8-3(c), § 36-22-18.

## **B. Motion For Relief From Automatic Stay**

19. Section 362(d) of the Bankruptcy Code provides that the Bankruptcy Court may grant relief from the automatic stay for “cause.” 11 U.S.C. §362(d). Accordingly, even if the Court rules that the automatic stay applies, the Court should grant movants relief under §362(d) and allow movants’ action to proceed in the state courts.

20. This Court has broadly recognized that “[c]ause’ for granting relief from the stay may exist if the equities in a particular case dictate that a lawsuit, or some other similar pending action, should proceed in a forum other than the bankruptcy court for purpose of liquidating the claim on which the lawsuit is premised.” *In re Marvin Johnson’s Auto Service, Inc., Debtor*, 192 B.R. 1008, 1013 (N.D.Ala.Bankr. 1996). As recognized by this Court, “Congress intended that the stay be lifted to allow proceedings to continue in forums other than the bankruptcy Court under appropriate circumstances.” and “[i]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere.” *Id.* at 1014 (citing legislative history).

21. To determine whether cause exists under §362(d) for granting relief from the automatic stay, the Court “must balance the hardship to [the movant] if he is not allowed to continue the lawsuit, against the potential prejudice to the debtor, the bankruptcy estate, and to other creditors.” *Id.* Factors considered by this Court in this balancing include: (1) trial readiness; (2) judicial economy; (3) the resolution of preliminary bankruptcy issues; (4) costs of defense or other potential burden to the estate; (5) the creditor’s chances of success on the merits; (6) specialized expertise of the non-bankruptcy forum; (7) whether the damages or claim that may

result from the nonbankruptcy proceeding may be subject to equitable subordination under Section 510(c); (8) the extent to which trial of the case in the non-bankruptcy forum will interfere with the progress of the bankruptcy case; (9) the anticipated impact on the movant, or other nondebtors, if the stay is lifted; and, (10) the presence of third parties over which the bankruptcy court lacks jurisdiction. *Id.*

22. “It is unnecessary for a court to find, before lifting the stay, that all considered factors weigh in favor of a party requesting relief from the stay.” *Id.* at 1017. Here, the equities dictate that movants’ lawsuit against multiple defendants in which the debtor is a collateral party at best should be allowed to proceed at least to a determination of the legal issues before the Supreme Court of Alabama. As discussed in detail above, the legal issues in the state court proceeding have been under submission for some time and are entirely matters of state law. The resolution of these issues will not impact the determination of matters that led the County to file its bankruptcy petition and judicial and other economics suggest that cause for lifting the stay is apparent.

For the foregoing reasons, movants request that the Court enter an order abstaining or otherwise lifting the automatic stay on the resolution of the matters pending in the Alabama Supreme Court in case no. 1100430 and for such other relief as may be appropriate.

Dated: January 30, 2012

Respectfully,

/s/ Raymond P. Fitzpatrick, Jr.  
Attorney for Fraternal Order of Police Lodge 64,  
Robert Thompson, Aubrey Finley and William D.  
McAnally, et al.

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### **Certificate of Service**

I hereby certify that on this 30th day of January 2012, I electronically filed the foregoing with the Clerk of the Court via the ECF/PACER system which will serve notice of the filing of the forgoing on all parties that have appeared and requested electronic service, and by service upon the following by United States first class mail:

J. Thomas Corbett, Esq.  
Bankruptcy Administrator  
1800 5<sup>th</sup> Avenue North  
Birmingham, AL 35203

/s/ Raymond P. Fitzpatrick, Jr. \_\_\_\_\_